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DEC 13 2005

OFFICE OF PETITIONS

In re	:	
Rogers	:	
Application No. 09/978,178	:	RECONSIDERATION OF
Filing Date: October 17, 2001	:	PATENT TERM ADJUSTMENT
Attorney Docket: 7570/73272	:	

This decision is in response to Applicant's Application for Patent Term Adjustment Under 37 CFR 1.705(b) timely¹ filed on August 31, 2005 requesting that the Office adjust the PTA calculation at the time of the mailing of the notice of allowance from a determination of two hundred and seventy-three (273) days to a determination of three hundred and seventy-six (376) days.

Applicant's application for PTA is **GRANTED**. The Office will adjust the PTA calculation reflected in PAIR to reflect a calculation of 376 days at the time of the mailing of the notice of allowance.

Applicants assert that the Office erred in the determination of PTA at the time of the mailing of the notice of allowance. Applicant agrees with the Office determination of 400 days of Office delay for the Office failing to meet the requirements of 37 CFR 1.702(a)(1) within 14 months, a four hundred (400) day delay. In addition, Applicant agrees with the two day of PTA reduction under 37 CFR 1.704(b) for the reply filed by applicant on August 19, 2002. However, applicant disputes the one hundred and twenty-five (125) day reduction for the submission of a notice of appeal on May 23, 2005. Applicant asserts that the notice of appeal was filed on February 9, 2005 and that no appeal was filed on May 23, 2005 but that an RCE was filed on May 23, 2005. Applicants believe that the reduction to PTA should have only been 22 days not one hundred and twenty-five days as the Office calculated.

Applicant's argument is persuasive. The record reflects that the notice of appeal was filed on February 9, 2005 not May 23, 2009. The Office errantly entered the date of May 23, 2005 as a

¹ Issue fee was paid on November 16, 2005.

date that a notice of appeal was filed. The record reflects that an RCE was filed on May 23, 2005. Accordingly, the Office should have assessed a reduction of 22 days.² Overall, the Office delay at the time of the mailing of the notice of allowance is 400 days and applicant delay was 24 days. The correct amount of PTA at the time of the mailing of the notice of allowance is 376 days as suggested by applicant.

After the mailing of the notice of allowance, the Office will forward this application to the Office of Patent Publications. Any delay in issuing the application more than four months after the payment of the issue fee will be reflected in the issue notification letter that is mailed to applicant approximately three weeks prior to the issue date.

The Office has assessed the \$200.00 fee to deposit account 06-1135. No additional fees are required by the Office in this matter.

Any questions concerning this decision should be directed to Kery Fries, Office of Patent Legal Administration, at 571-272-7757.

Kery Fries

Kery Fries
Senior Legal Advisor
Office of Patent legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

cc: Adjusted PAIR calculation

² The reduction began on January 19, 2005 the day after the 3 month period expired and ended on February 9, 2005.